Supreme Court, U.S.
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No.

In the

Supreme Court of the United States

$242,484.00, Petitioner

v.

United States of America, Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Petitioner's Fifth Amendment Due Process Rights were violated when the District Court affirmed the judgment of forfeiture, pursuant to 21 U.S.C. § 881 (a)(6), where the United States of America failed to present sufficient evidence to establish probable cause that the money seized was connected to narcotic transactions.

2. Whether the decision of the Eleventh Circuit Court of Appeals in this case, conflicts in whole or in part with the decisions of other United States Court of Appeals, thus requiring this Court to exercise its supervisory powers.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, Deborah Stanford, individually and as President, Director, and Stockholder of Mike's Import & Exports, U.S.A., Inc., a Florida corporation, was the Claimant before the Court of Appeals and is a Claimant in this Petition. There are no parent or publicly held company that own 10% or more of the corporate stock of Mike's Import & Export, U.S.A., Inc.

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JURISDICTION

The District Court entered a forfeiture judgment in favor of the United States of America. The Claimant then filed a notice of appeal. A panel of the Eleventh Circuit Court of Appeals issued an opinion reversing the District Court forfeiture judgment on January 22, 2003. United States v. $242,484.00, 318 F.3d 1240 (11th Cir. 2003). A timely application for rehearing was submitted by the United States of America. On March 14, 2003 the Eleventh Circuit Court of Appeal entered an order staying the January 22, 2003 opinion and also granting the United States' requests for a rehearing. On June 30, 2003, the panel denied the United States of America's petition for rehearing but withdrew the opinion of January 22, 2003 and issued a new opinion in favor of the Claimant. United States v. $242,484.00, 351 F.3d 499 (11th Cir. 2003). Thereafter, on November 20, 2003 the Eleventh Circuit denied the petition for rehearing filed by the United States of America and substituted its opinion with its previous withdrawn opinion in favor of the Claimant. Thereafter, on January 23, 2004 the majority of the judges of the Eleventh Circuit Court of Appeals vacated the previously entered panel opinion and voted in favor of a rehearing in banc. United States v. $242,484.00, 357 F.3d 1225 (11th Cir. 2004). On November 2, 2004, the Eleventh Circuit Court of Appeal issued an in banc ruling in favor of the United States of America and remanded the case to the original appellate panel to determine whether there had been a Fourth Amendment violation. The final judgment of the *en* banc ruling was issued on December 2, 2004. Thereafter, on April 18, 2005, the appellate court affirmed the District Court's decision finding that there was no Fourth Amendment violation. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment of the United States Constitution provides that in relevant part: "...nor shall any person ...be deprived of life, liberty, or property, without due process of law..."

STATUTORY PROVISION INVOLVED

The relevant provision of 21 U.S.C. § 881(a)(6) that provides that: a) The following shall be subject to forfeiture to the United States and no property right shall exist in them: (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

STATEMENT

On December 10, 1998, the Claimant flew from Miami to New York City on a round-trip ticket for which she had paid $93 in cash on December 8, 1998. The ticket she purchased had her returning to Miami on December 12, 1998 but she was a no-show for the return flight. Later that day, the Claimant called and rescheduled her flight for the next day, December 13, 1998 but she did not make that flight either. The Claimant changed her flight plans one

more time and eventually made it to the airport to catch a flight departing from New York's John F. Kennedy Airport on the morning of December 14, 1998.

At the airport in New York, the Claimant put the backpack she was carrying through the X-ray machine. When the security workers manning the machine questioned her about the contents of the two packages in her backpack, the Claimant became belligerent. The Claimant removed the packages from the backpack and showed the security workers that the two packages were filled with currency. The airport workers allowed the Claimant to carry the backpack and its contents on board her flight to Miami.

After the Claimant boarded the plane, a security worker in New York approached Drug Enforcement Agent Bradley Cheek, a member of the airport's drug interdiction unit, and told him what had happened. Agent Cheek called DEA Special Agent Kenneth Miles at the Miami International Airport and informed him about the incident. Agent Cheek also gave Claimant's description to Agent Miles and told him that she was carrying two packages containing a large amounts of cash in a carry-on bag. Agent Miles, Special Agent John Eric Johnson, and three or four others agents went to the gate where Claimant's flight was to arrive.

After the Claimant exited the airplane in Miami, Agents Miles and Johnson were able to recognize the Claimant from Agent Cheek's description. They approached her, showed her their DEA credentials, and asked to speak with her. After the Claimant consented, the agents asked to see her plane ticket and driver's license, and she complied. The name that appeared on the airline ticket was Claimant's real name, Deborah Stanford. The name that appeared in the valid Florida driver's license produced by the Claimant, was also Deborah Sanford.

Agent Miles then asked the Claimant if she was carrying any contraband, weapons, or large sums of currency. The Claimant responded that she was carrying money. The agent then asked her how much money, and the Claimant told him "about two." When asked "two what?," The Claimant answered "about two hundred thousand." The agent asked her where she was carrying the money, and Claimant pointed to her backpack. The agent asked to see the money, and the claimant consented.

Inside Claimant's backpack the agents found two large packages full of currency in bundles. One of the packages was wrapped in brown paper wrapping and overlaid with black plastic wrap, cellophane wrap. The other package contained bundles of cash wrapped in plastic cellophane in a Christmas shopping bag. All of the currency was sealed in a cellophane-type material. The cash was bundled together with rubber bands, in non-uniform bundles in various denominations, without any bank wrappers. There were 18,362 bills, and they weighed a total of 40.5 pounds.

After initially telling the agents there was about $200,000 in cash, and then denying that she knew exactly how much there was, the Claimant told the agents that the black-plastic wrapped package contained $79,900.00, and the Christmas bag wrapped package contained $162,750.00, for a total of $242,650.00. After the money was counted, the agents determined that the actual amount of money in the two packages was $242,484.00.

The agents then questioned the Claimant about how she came to have nearly a quarter of a million dollars in cash in the backpack she was carrying. The Claimant first told the agents that the reason she had gone to New York City was unrelated to the $242,484.00 in cash. The Claimant insisted that the only reason she had gone to New York was because of a court case relating to a traffic accident, which had occurred ten years earlier. She never produced any

documents relating to the court case.

According to the Claimant, after she had arrived in New York for the traffic accident case, her brother called her and told her to pick up some money for him on behalf of their business, Mike's Import and Export, U.S.A., Inc. She told the agents that her brother asked her to pick up the cash from "some people" and bring it back to him in Miami. Agent Miles asked her several times who the people were, and the Claimant responded, "some people" and "I don't know, just some people." The Claimant said that she did not know their names.

In addition, the Claimant was not able to tell the agents the place where she had met them to receive the money. She claimed that her brother had told her where to go, given her directions, and told her that the people would get in touch with her. When asked how she would have known whom the people were when she went to meet them, the Claimant responded, "They would know." The Claimant did not produce to the agents any documentation, in the form of receipts or otherwise, evidencing the transfer of the $242,484.00 in cash to her from "some people" whose identities she did not know.

Agent Miles also asked the Claimant where she had stayed during her four nights in New York, but she claimed that she did not know. During the course of the interview, Agents Miles took from the Claimant an envelope on which was written the name of the Newton Hotel in New York City, a phone number, and what appeared to be a room number. Agent Miles testified that he called the hotel and also subpoena the hotel records. The records revealed that no one by the name of Deborah Stanford had stayed there during the time in question.

During the interview, the Claimant also told the agents that she was the president of "Mike's Import and Export," the business for which she was carrying the cash. One of

the agents ran "Mike's Import and Export" through the DEA's Narcotics and Dangerous Drug Information System ("NADDIS"). It scored a "hit" for "Mike's Import and Export NV," and showed aliases for this company including "Mike's Electronics Import and Export" and "Mike's Import Export," with a business address in Opa Locka, Florida. The database reports on the business stated: "Possible utilized for money laundering." The report had two dates listing the business as being involved in money laundering. The Claimant told the agents that it was common for her to carry large sums of money for her business, but she said that usually the money was wired to its bank.

While they were interviewing the Claimant, the agents sent for Rambo, a narcotics-detecting dog. Rambo graduated from the United States Canine Academy and Police Dog Training Center, earned certification from the National Narcotics Detector Dog Association, and has an enviable rating. One of Rambo's trainers testified that Rambo's "proficiency record would show that he's very well certified in the community," and added that Rambo was probably one of the best dogs he had trained in the 23 years he had been doing it. Rambo's field of specialty is detecting cocaine, marijuana, heroin, and methamphetanine. Not being a "cash hound," Rambo does not alert to the scent of untainted currency, but only to the scent of one of those four drugs. The backpack with the money was placed with four or five other bags while Rambo and his handler were out of the room. Rambo was brought in, and alerted to Claimant's backpack.

During trial, Agent Miles also testified that the Claimant changed stories after he asked her more questions about the 10-year-old court case that she had in New York. According to Agent Miles, the Claimant told him that she had gone to New York for the specific purpose of picking

up the cash. Agent Miles also testified that after she told this second story, the Claimant got into a "heated exchange" with James Williams, the DEA supervisor, who had entered the room. She demanded that she be allowed to phone an attorney and was directed to the bank of pay phones outside the office. The Claimant phoned an attorney, the DEA kept the money, and she left the airport. The Claimant was never arrested or charged with any crime arising out of these events.

As part of the follow-up investigation, Agent Miles obtained the business addresses of Mike's Import and Export USA, Inc., and went there to investigate. The two addresses listed for Mike's, were in Opa Locka, Florida. Several different businesses were listed as using both addresses. When Miles went to the first address he found that it was a modest, single family home located in a residential neighborhood. Agent Miles spoke with a man at the house who said that Claimant lived there, renting the front part of the residence from him. The second address for Mike's was also a house in a residential neighborhood.

After a bench trial, the District Court entered a forfeiture judgment in favor of the United States of America. The Claimant then filed a notice of appeal. A panel of the Eleventh Circuit Court of Appeals issued an opinion reversing the District Court's forfeiture judgment on January 22, 2003. United States v. $242,484.00, 318 F.3d 1240 (11th Cir. 2003). A timely application for rehearing was submitted by the United States of America. On March 14, 2003 the Eleventh Circuit Court of Appeal entered an order staying the January 22, 2003 opinion and also granting the United States' requests for a rehearing. On June 30, 2003, the panel denied the United States of America's petition for rehearing but withdrew the opinion of January 22, 2003 and issued a new opinion in favor of the Claimant. United States v. $242,484.00, 351 F.3d 499

(11th Cir. 2003). Thereafter, on November 20, 2003 the Eleventh Circuit denied the petition for rehearing filed by the United States of America and substituted its opinion with its previous withdrawn opinion in favor of the Claimant. Thereafter, on January 23, 2004 the majority of the judges of the Elevenths Circuit Court of Appeals vacated the previously entered panel opinion and voted in favor of a rehearing in banc. United States v. $242,484.00, 357 F.3d 1225 (11th Cir. 2004). On November 2, 2004, the Eleventh Circuit Court of Appeal issued an in banc ruling in favor of the United States of America and remanded the case to the original appellate panel to determine whether there had been a Fourth Amendment violation. The final judgment of the *en* banc ruling was issued on December 2, 2004. Thereafter, on April 18, 2005, the appellate court affirmed the District Court's decision finding that there was no Fourth Amendment violation.

REASONS FOR GRANTING THE PETITION

I

The Petition for Certiorari should be granted because the United States of America failed to present sufficient evidence to establish probable cause that the money in question was related to a narcotic offense as required by 21 U.S.C. § 881 (a)(6). Accordingly, given there was no evidence presented linking the money in question to a drug offense, the order of forfeiture entered by the District Court and the Court of Appeals violates the Fifth Amendment of the United States Constitution because it deprived the Claimant of her money without due process of law.

The money in question was seized pursuant to 21 U.S.C. § 881 (a)(6). This statute gives the United States of America the right to seize an individual's property only in

situations where:

> All **moneys**, negotiable instruments, securities, or other things of value **furnished or intended to be furnished by any person in exchange for a controlled substance** or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter. [Emphasis added]

Accordingly, pursuant to 21 U.S.C. § 881 (a) (6), the only properties that can be seized are properties that are related to illegal drug transactions.

In analyzing this issue, the Court should be mindful that forfeitures are not favored in our country and thus forfeiture should only be enforced when there is compliance with both the letter and the spirit of the law. United States v. One 1936 Model Ford V-8 De Luxe Coach, 59 S.C t. 861, 865 (1939), United States v. $38,000.00, 816 F.2d 1538, 1547 (11th Cir. 1987) Accordingly, strict compliance with the letter of the law by those seeking forfeiture is required. For these reasons, the courts should only grant forfeiture, when the circumstances are definitely sufficient to establish probable cause to tie the property being seized in a substantial way to an illegal drug transaction. United States v. $4,255,625.39, 762 F.2d 895, 903 (11th Cir. 1985), United States v. $364,960.00, 661 F.2d 319, 323 (5th Cir. Unit B 1981). It is important to note, that in the year 2000 Congress amended 21 U.S.C. § 983 and increased the burden of proof in forfeiture cases by requiring the party seeking forfeiture to proof its case by the "preponderance of the evidence". However, this

amendment is not applicable to this case because it became effective after this case occurred. Accordingly, the standard applicable to this case is that of "probable cause".

Although the probable cause standard requires less evidence than the preponderance of the evidence standard, it demands more powerful evidence than would allow someone to suspect, even reasonably to suspect, that a substantial connection exists between the pertinent property and a drug crime. Probable cause exists when "the facts warrant a reasonably cautious person" to believe that the item to be forfeited is substantially related to drug crime. United States v. Armstrong, 722 F.2d 681, 686 (11th Cir. 1984), United States v. Four Parcels of Real Property, 941 F.2d 1428, 1440 (11th Cir. 1991). It should also be noted that in Four Parcels of Real Property, (*supra*) the court stated that the standard for probable cause in forfeiture cases is "the same standard used to determine the legality of arrests, searches, and seizures in criminal law".

The probable cause inquiry is a flexible one in which the court must consider the totality of the circumstances. United States v. $121,100.00, 999F.2d 1503, 1506 (11th Cir. 1993). In evaluating the evidence of proceeds traceable to drug transactions, the courts have eschewed clinical detachment and endorsed a common sense view to the realities of normal life. United States v. Carrell, 252 F.3d 1193, 1201 (11th Cir. 2001).

When reviewing a forfeiture order, the reviewing court must accept the district court's fact finding unless clearly erroneous. United States v. Land, 221 F.3d 1194, 1199 (11th Cir. 2000 However, the determination of whether the facts as found by the district court are sufficient to establish probable cause is a question of law which requires a *de novo* review. United States v. $121,100.00, 999 F.2d 1503 at 1507 (11th Cir. 1993).

In this case, the facts as determined by the District Court, were insufficient to establish probable that the money in question was substantially related to a drug crime. The truth of the matter is that no evidence was presented to support this theory.

In affirming the District Court's decision, Court of Appeals gave great weight to several facts presented during trial. One of these facts was the amount of money. With regards to this particular fact, the Court of appeals noted that the Claimant was carrying 40.5 pounds of cash most of which were small bills. The Court of Appeals cited that there were over 18,000 bills in Claimant's backpack, most of which were small denominations. However, this conclusion on the part of the Court of Appeals is incorrect, because the majority of bills were 20-dollar bills. In total there were $152,960.00 in 20 dollar bills. It should also be noted that of the 18,000 bills, only 8,000 bills were one and five dollar bills. This fact tends to negate the Court of Appeals assumption that the money was connected to drugs because most bills were small denominations. Regardless, the law is clear, large amount of cash does not alone satisfy the government's burden to show probable cause. United States v. $121,100.00, 999 F.2d 1503 at 1507 (11th Cir. 1993). This Court should also note that the Ninth Circuit has held that that "any amount of money, standing alone, would probably be insufficient to establish probable cause for forfeiture." United States v. $191,910.00, 16 F.3d 1051, 1071 (9th Cir.1994), United States v. $30,060.00, 39 F.3d 1039, 1041 (9th Cir.1994), United States v. $405,089.23, 122 F.3d 1285 (9th Cir. 1997).

The fact is that is not illegal to carry cash. There are legitimate businesses that deal in heavy amounts of cash. One can assume that the money in question came from a legitimate business just as easily as the Court of Appeals assumed that the money in question came from an

illegitimate source. The bottom line is that this is all speculation, which is insufficient to establish probable cause that the money was link to illegal drug activity. In this case, there is also the possibility that the money came from some illegal operation not related to narcotics. If the money in question came from an illegal operation, such as gambling, prostitution or fencing, the money could not be forfeited because it was not derived from an illegal drug transaction. It also equally possible that the money came from a legitimate business transaction where one or both of the participants wanted to avoid paying taxes.

Another factor taken into account by the Circuit Court was that the Claimant appeared to have changed her story as to why she traveled to New York. At first the agents claimed that she traveled to New York because of a traffic accident case and later told the agents that she came to pick-up the money. It is important to note, that the agent did not disproved her story about the traffic accident case. It would have been very easy for the agents to conduct an electronic search for information about a court case pending in New York by a person named Deborah Sanford. This type of search takes seconds. Even assuming that the agents were correct in stating that the Claimant changed her story, this does not make it any more possible that the money in question came from an illegal drug transaction. It still equally as possible that the money in question came from either a legitimate source as well as an illegitimate source not related to illegal narcotic transactions.

The Court of Appeals also gave great weight to the facts that the Claimant would not or could not tell the agents the names of the people who gave her the money, the place that she received the money, or where she stayed in New York. These facts do not add anything to the issue of probable cause. Some people have better memories than others. Perhaps the Claimant is not good in remembering this type

of information. Perhaps she did not feel comfortable putting a legitimate business client on the spot. Perhaps, she did not want to put an illegitimate non-drug related business client on the spot. This is all speculation. Likewise the fact that she could not or would not reveal to the agents where she stayed in New York or why she changed her travel plans. There are numerous reasons why a person may change travel plans, especially if in New York, "the City that never sleeps". There are also many legitimate reasons why a person may not want to reveal to a stranger, let alone a government agent, where he or she stayed or did while visiting New York.

The Circuit Court of Appeal also relied on the fact that the packages of money were wrapped in cellophane-type plastic. In weighing this issue, the Circuit Court held: "The cash was also, as the district court found, sealed in a cellophane-type material." Wrapping cash in cellophane-type material is a technique known to be used by drug dealers to prevent discovery by drug-sniffing dogs."

This assumption on the part of the Court of Appeals overlooks the fact that the Claimant was taking a domestic flight from New York to Miami. Typically, passengers do not encounter drug-sniffing dogs in domestic flights. Most importantly, in this case, the Claimant carried the money in a backpack. In order to enter the boarding terminal, all passengers have to put their carry on luggage through an X-ray machine that takes a negative photo of the contents of such luggage. In fact, the security personnel at the airport in New York detected the money inside Claimant's backpack. If the Claimant was concerned about the money being detected, she would not have put the money in a backpack and passed it through the X-ray machine. Perhaps she would have been better of hiding the money in her clothes. The bottom line here is that if the Claimant was concerned about the money being detected, all she had to do was to

rent a car and drive to Miami. This way she would avoided all airport security. There are also other reasons for wrapping money in plastic. The most obvious is to keep moisture out.

The original Circuit Court panel that decided the case in favor of the Claimant did not give great weight to the fact that the money was wrapped. In so holding it found that:

> Stanford never hid the fact that she was carrying currency from the law officers; when asked, she told the DEA agents that she was carrying cash. Had [Claimant] **actively attempted to hide the money from the authorities, the wrapping might be of more influence. But in this case, we cannot say that the currency being wrapped to conceal its presence indicates a connection to narcotics transactions as required by the statute. While we recognize that the manner of concealment and transportation, taken together, is probative and may raise suspicion about the source of the cash, we cannot ignore the weakness of the circumstantial evidence at issue here.** [Emphasis added]

By her actions, it was obvious that the Claimant did not attempt to conceal the money. Accordingly, the Court of Appeals should not have given great weight to this factor.

In addition, the Circuit Court's assumption that that cellophane is used by drug dealers to wrap their money in order to conceal the scent of narcotics is even weaker when viewed alongside the fact that a very high percentage of the currency in the United States is contaminated with the scent of narcotics. United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997). It should be noted that other courts have typically found that narcotics-detection dog alerts was

not a very significant factor. In United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997), the court refusing to take seriously the results of a dog alert because it found that at least one-third — or as much as 96% — of currency in the United States is contaminated with cocaine. Another case worth noting is that of Muhammed v. Drug Enforcement Agency, Asset Forfeiture Unit, 92 F.3d 648, 653 (8th Cir. 1996). In Muhammed, (supra) the court concluding that a dog alert is "virtually meaningless" because "an extremely high percentage of all cash in circulation in America today is contaminated with drug-residue". In United States v. $5,000.00, 40 F.3d 846, 849-50 (6th Cir. 1994) the court also found that the value of a dog alert is "minimal" because 70% to 97% of currency in the United States is "so thoroughly corrupted" with cocaine. Since most of the currency in the United States is contaminated with drugs, all individuals, not just drug dealers, may be motivated to wrap their money in plastic in order to avoid detection by a drug- sniffing police dog.

Ironically, the Circuit Court in this case gave great weight to the fact that the police dog, Rambo, alerted to Claimant's backpack. In fact, the Court of Appeals gave greater weight to the dog alerting than did the District Court:

> The district court found that: "All else being equal, however, **the money upon which a narcotics dog `alerts' is more likely to have come into contact with narcotics at some time in the fairly recent past than money upon which a drug dog does not alert.**" Concerned about statements in opinions from other circuits deprecating the probative value of the scent of drugs on cash, the court said that "although weak, this factor is relevant here." On this record, we do not share the

district court's opinion1that the **probative value of Rambo's alert is weak**. we do agree that it is relevant. It is yet another fact weighing in favor of probable cause. [Emphasis added]

This holding is not only in direct conflict with other Circuit Courts as stated above, but it is also premised on the false assumption that if a dog alerts for narcotics the money must have come in contact with the drugs in the recent past. Ironically, the United States did not present any experts to support the so-called "recent-contact theory". The only evidence presented about the recent contact theory was a hearsay statement of Agent Cheek who testified that:

> Counsel asked Agent Cheek whether he had " learned in the course of [his] training and [his] field operations that it has come to be the case that perhaps as much as 90 percent of all bank notes in circulation" are tainted with drugs. Cheek responded: "Not 90, I have heard 80, 70, all different amounts, but the majority of U.S. currency has allegedly been tainted by narcotics." Instead of leaving well enough alone, Stanford's counsel pressed the matter, asking Cheek whether there was "any way in the world to determine the specific point in time when the bank note is passing through commerce when it picked up whatever degree of taint it supposedly had." Cheek answered that based upon his "understanding and knowledge and experience, there is a shelf life more or less of narcotics on currency." **He testified that according to what he had read and been told, "after like a week the money gets, basically gets cleansed, that there would**

> **not be enough narcotic residue on the money or a canine alert or an ion scan." Recoiling from that blow, counsel quickly got Cheek to agree with him that Cheek had no expertise and was just saying what somebody had told him.** The fact remains that no one with any expertise testified in support of Stanford's ever lasting scent, global contamination theory. There is simply no basis for that theory in the evidence presented in this case. [Emphasis added]

Is clear that the Circuit Court whimsically invented the "recent –contact theory" without any expert testimony. Most importantly, the Court's assumption that the money in questioned must have been in recent contact with narcotics is preposterous. The testimony presented at the trial was that the police dog alerted to the backpack. There was no testimony presented that the dog alerted to the money. Accordingly, it is highly probable that the backpack may have come in contact at the airport, the DEA office or at another place with an item that was contaminated with drugs. It is also equally possible that the dog alerted to a single bill that was contaminated. The truth of the matter is that the only one that knows why he alerted is Rambo. We will never know why Rambo alerted, but given the reality that most currencies in the United States are contaminated with narcotics, very little weight should have been given to this factor by the Circuit Court.

For the most part, the courts have traditionally granted forfeiture in airport cases where the individual blatantly lied to the agents and also had a criminal history of drug trafficking. One of these cases is United States v. $121,000.00, 999 F.2d 1503 (11th Cir. 1993). In $121,000.00, (*supra*), the Eleventh Circuit Court of

Appeals was faced with a situation somewhat similar to the one at bar. On March 19, 1990, Frederick Foster, appellant's decedent and predecessor as claimant to the defendant currency in this case, paid $580 in cash for a round-trip airline ticket for travel from Atlanta to New York. Foster's itinerary called for him to depart Atlanta the following morning at 9:58 a.m. He was scheduled to return later that day on a flight leaving New York at 10:52 p.m.

Soon after Foster purchased the ticket, airline officials alerted law enforcement officials about the transaction and an investigation was begun. On the morning of March 20, two agents from the Drug Enforcement Administration (DEA) approached Foster at the gate for the flight to New York. According to the agents, Foster appeared quite nervous when they interviewed him. The agents discovered that Foster's ticket bore the name "Jerry Foster." Foster told the agents that that was in fact his name. At the agents' request, however, he produced a temporary driver's license bearing his true first name, Frederick.

Suspicious that Foster was transporting narcotics or drug proceeds, the agents, without his consent, ordered Foster's luggage detained. The agents then subjected the bags to a narcotics-detection canine sniff. When the dog alerted to the presence of a controlled substance in Foster's bags and the agents learned from a criminal history check that Foster had been arrested and convicted several times for narcotics violations, they obtained a warrant to search the bags. The resulting search did not expose drugs, but did reveal the defendant $121,100.00. On the strength of these facts, the government commenced civil forfeiture proceedings pursuant to 21 U.S.C. § 881 (a) (6). In finding probable cause that the money in question, the Court gave great wait to several factors. However it concluded that the deciding factor was that the claimant had a criminal history of narcotic arrests and convictions. In so finding the court

stated: "**Finally, and critically**, [claimant], had a history of narcotics arrests and convictions. From the early 1970's through the mid-1980s, Foster was convicted of controlled substances on at least three occasion". At page 1507 [Emphasis added]

In the case at bar, the Claimant has no criminal history. In fact she has never been arrested. In addition, no one was ever arrested for any crime involving the money in question.

It is also worth noting, that unlike in the case of $121,000.00, (*supra*), the Claimant in this case did not provide a false name to the agents, allowed the agents to check her backpack and was not nervous when approached by the agents.

Arguably, the facts presented in this might induce someone to suspect that a "substantial connection" to a crime exists, however, more than suspicion is necessary; and the connection must be to drug crime, not to crime in general. For a forfeiture, the government's evidence here is insufficient to cause a reasonably cautious person to believe — to have some confidence, not just to imagine that it could be possible — that the currency was substantially connected to a drug crime.

The Court of Appeals far departed from the accepted and usual course of judicial proceedings in entering the judgment of forfeiture because there was no evidence presented to establish that there was probable cause that the money seized was connected to narcotic transactions, thus requiring the exercise of this Court's supervisory power.

II

Whether the decision of the Eleventh Circuit Court of Appeals in this case, conflicts in whole or in part with the decisions of other United States Court of Appeals, thus requiring this Court to exercise its supervisory powers.

This Court should note that there appears to be a conflict between the Eleventh Circuit Court of Appeals and other Circuit Courts with regards the issue of the currency contamination. A case that is worth noting is that of United States v. $30,060.00, 39 F.3d 1039 (9th Circuit, 1994).

In $30,060.00, (*supra*) Deputies of the Los Angeles County Sheriff's Department stopped Alexander for running a stop sign. When the deputies approached Alexander's Ford Tempo, they saw on the front passenger seat a plastic bag filled with money. The money was arranged in $1,000 stacks bound by rubber bands; the bills included denominations of $5, $10, $20, $50, and $100. It is unclear whether the deputies removed the plastic bag from the seat. While still at the scene, they called for a narcotics detection dog. The dog positively alerted to the bag of money, indicating the presence of the scent of a controlled substance. The deputies searched Alexander and his car for drugs, but found none. After reading Alexander his rights, the deputies questioned him about the money. Alexander stated: (1) the bag contained $30,000; (2) he was a partner with Dave Tucker and had earned the money by working at Tucker's Cafe; (3) he had no documentation to show how he had earned the money nor a bank account where he kept the money; and (4) he currently worked at a store named Jim Dandy's Liquor. Thereafter, Alexander was taken into custody and charged with violating Cal. Health and Safety Code Sec. 11352, an offense involving a controlled substance.

Back at the station, the deputies attempted to verify

Alexander's statements. The money was counted and it totaled $30,060. The deputies called Dave Tucker at a number provided by Alexander. Tucker said that Alexander was his daughter's boyfriend and had no connection to Tucker's Cafe. They also called Steve Lee of Jim Dandy's Liquor who stated that Alexander no longer worked at the liquor store.

All charges against Alexander were eventually dismissed. The Federal Bureau of Investigation adopted the seizure, however, and the federal government sought to forfeit Alexander's money as drug money under 21 U.S.C. Sec. 881(a)(6). Alexander responded that the seizure was illegal and moved to dismiss the government's complaint and to suppress evidence derived from the search of his car. The district court denied Alexander's motion. Alexander sought a writ of mandamus from the Ninth Circuit, but the writ was denied.

Alexander next moved for summary judgment. After briefing and oral argument on the motion, the district court granted summary judgment in favor of Alexander, concluding the above facts were insufficient to establish probable cause that the money was connected to drugs as required to warrant forfeiture under 21 U.S.C. Sec. 881(a)(6). The government filed a timely notice of appeal, and the district court stayed execution of the judgment pending the government's appeal. In affirming the District Court's decision, the Ninth Circuit Court of Appeals examined the issue of the currency contamination. In so doing it found that:

> We have previously found such an alert to be "strong evidence" when making a probable cause determination. United States v. $215,300 U.S. Currency, 882 F.2d 417, 419 (9th Cir.1989), cert. denied, 497 U.S. 1005 (1990). **In recent years, however, subsequent courts, including our**

own, have questioned the probative value of positive dog alerts due to the contamination of America's paper money supply with narcotics residue. United States v. $191,910, 16 F.3d 1051, 1062 n.21 (9th Cir.1994 **(expressing concern that currency contamination may affect the probative value of a narcotics detection dog's positive alert in currency forfeiture cases);** United States v. $53,082, 985 F.2d 245, 250 n. 5 (6th Cir.1993); United States v. $639,558, 955 F.2d 712, 714 n. 2 (D.C.Cir.1992) Jones v. Drug Enforcement Admin., 819 F.Supp. 698, 719-21 (M.D.Tenn.1993) **(rejecting the probative value of a narcotics detection dog's positive alert to seized currency on the basis of evidence of widespread currency contamination);** United States v. $80,760, 781 F.Supp. 462, 475-76 (N.D.Texas 1991), aff'd, 978 F.2d 709 (5th Cir.1992).[Emphasis added]

Other Courts have also rejected the probative of the positive alerts to narcotics in seized currency by police dogs. United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997). It should be noted that other courts have typically found that narcotics-detection dog's alert was not a very significant factor. In United States v. $506,231.00, 125 F.3d 442, 453 (7th Cir. 1997), the court refusing to take seriously the results of a dog alert because at it found that at least one-third — or as much as 96% — of currency in the United States is contaminated with cocaine. Another case worth noting is that of Muhammed v. Drug Enforcement Agency, Asset Forfeiture Unit, 92 F.3d 648, 653 (8th Cir. 1996). In Muhammed, (supra) the court concluding that a dog alert is "virtually meaningless" because "an extremely high percentage of all cash in

circulation in America today is contaminated with drug-residue". In United States v. $5,000.00, 40 F.3d 846, 849-50 (6th Cir. 1994) the court also found that the value of a dog alert is "minimal" because 70% to 97% of currency in the United States is "so thoroughly corrupted" with cocaine.

These decisions are in direct conflict with the ruling in this case where the Circuit Court of Appeal gave great weight to the fact that Rambo, a police-sniffing dog, alerted to the backpack that the Claimant was carrying.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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Miami, FL 33132
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APPENDIX A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16485

D.C. DOCKET No. 99-01259 CV-DMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

Versus

$242,484.00,

Defendant,

DEBORAH STANFORD, individually and as President, Director, and Stockholder of Mike's Import & Export, U.S.A., a Florida Corporation,

Claimant-Appellant,

Appeal from the United States District Court for the Southern District of Florida

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(April 18,2005)

Before EDMONDSON, Chief Judge, ANDERSON, Circuit Judge, and POGUE*, Judge.

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*Honorable Donald C. Pogue, Judge, United States Court of International Trade, sitting by designation.

PER CURIAM:

This case comes before us on remand from this Court's en banc decision in United States v.$242,484.00 . 389 F.3d 1149, 1168 (11th Cir.2004). The case originally arose out of a civil forfeiture action applying 21 U.S.C.& 881 (a) (6) –the version in effect before the 2000 amendments – which provided for the forfeiture of money linked to drug crimes. The district court ordered the forfeiture of $242,494.00 seized from claimant-appellant Deborah Stanford. Stanford appealed, arguing that her Fourth Amendment rights were violated and that the government lacked probable cause to seize the defendant currency. A panel of this Court agreed that the circumstances were insufficient to establish probable cause and ordered the currency returned to Stanford. The panel's order was vacated when this Court decided to rehear the case en banc.

The en banc court affirmed the district court's ruling that the government established probable cause for the forfeiture of the defendant currency and remanded any remaining issues to the panel. We now consider whether Stanford's Fourth Amendment rights were violated in the course of the encounter that led to the seizure of the defendant currency. Because we conclude that Stanford consented to the initial interview with the DEA agents and to the agents' request that she accompany them to an office for further questioning, we hold that no constitutional violation occurred and affirm the district court's forfeiture order.

I. BACKGROUND

On December 14,1998, Deborah Stanford flew from New York City to Miami, Florida. When airport personnel in New York questioned her about the contents of two packages in her backpack, Stanford became belligerent. She eventually

removed the packages and revealed that they contained large amounts of currency. One worker attempted to confiscate the currency, but was countermanded by a superior.

Although Stanford was allowed to board her flight with the currency, an airport security worker approached Drug enforcement Agency Agent Bradley Cheek and told him what had happened. Agent Cheek relayed the information to DEA Special Agent Kenneth Miles at the Miami International Airport. He described Stanford and said that she was carrying a large amount of cash in her backpack. Agents Miles and John Eric Johnson then went to the gate where Stanford's plane was to arrive.

When Stanford exited her plane in Miami, the two agents recognized her based on Agent Cheek's description. They approached Stanford and showed their DEA credentials. They told her that their job was to contact people and seek their help in combating drug flow, asked her if she would talk to them and consent to a search of her baggage, and advised her that she was not required to do so. She consented. The agents asked to see her plane ticket and driver's license, and she complied. The agents confirmed that the names on the ticket and license matched and returned the items to Stanford. Agent Miles asked if Stanford was carrying any contraband or large sums of money, and she replied that she was carrying "about two". When asked what she meant but this, Stanford told Agent Miles that she had "about two hundred thousand" dollars in her backpack. Agent Miles asked to see the contents of the backpack, and Stanford consented. Inside the pack, Agent Miles found two large packages, one wrapped in black cellophane and one wrapped in plastic cellophane inside a Christmas shopping bag. He asked Stanford's permission to poke holes in the wrapping, and she consented. Each package contained large, non-uniform bundles of currency.

At that point, Agent Miles asked Stanford to

accompany the agents to the airport's DEA office. Stanford agreed. Agent Miles testified that she answered "sure". She then walked with the agents to the office, with Agent Miles carrying the backpack containing the currency. Agent Johnson walked in front of Stanford, while Agent Miles trailed slightly behind her. Neither agent touched Stanford, nor did they display any weapon.

When the group reached the DEA office, Agent Miles proceeded to question Stanford about the reason for her trip to New York and the source of the currency. Stanford said that she had gone to New York for a civil trial arising out a traffic accident she had been involved in ten years earlier, but she was unable to produce any documents relating to the court case. As for the source of the currency, Stanford claimed that her brother contacted her while she was in New York and asked her to pick up some money for Mike's Import & Export USA, Inc.(Mike's"), a business with which both siblings were associated[1]. Stanford could not provide the names of the individuals who gave her the money or tell the agents where the transfer took place, nor could she provide any documentation connecting the money to Mike's. When pressed, she claimed that her brother had given her directions and told her that the people with the money would know her.

The agents also made further inquiries about the amount of cash that Stanford was carrying. After initially declaring that she had "about two hundred thousand" dollars, Stanford finally told the agents that the black cellophane-

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[1] While Stanford was explaining how she came to possess the currency, DEA agents were using a computer terminal in the office to check on the information she provided. The DEA's Narcotics and Dangerous Drug Information System (NADDIS) returned a hit for "Mike's Import and Export NV," a company with a business address in Opa Locka, Florida. The report stated that the business, which had aliases of "Mike's Electronics Import and Export" and "Mike's Import Export," was "Possible [sic] utilized for money laundering.

wrapped package contained $79,900.00 and the Christmas-wrapped package contained $162,750.00, for a total of $242,650.00. Stanford was off by only $166.00, as the package contained a total of$242,650.00. Stanford was off by only $166.00,as the packages contained a total of $242,484.00. The money was bundled according to denomination, but the bundles contained different amounts, were of varying thickness, and did not bear the binding of any bank or financial institution.

During the airport interview, "Rambo," a narcotics-detection dog, was brought into the office. Stanford's backpack was placed in a hallway with several other bags of similar size and shape, and Rambo was allowed to inspect them. He alerted to Stanford's backpack. At the point, Stanford had a heated exchange with the DEA supervisor who had just arrived. She then left the room to contact an attorney and ultimately left the airport. The DEA retained the backpack containing the currency. Stanford was never arrested or charged with any crime arising out of these events.

II .DISCUSSION

Stanford argues that her encounter with DEA agents at the Miami Airport constituted a seizure in violation of her Fourth Amendment rights[2]. Because violation of the Fourth Amendment triggers the exclusionary rule, Stanford argues that the district court should have excluded from the government 's case-in-chief all evidence gathered during the airport encounter. See One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania ,380 U.S.692, 702, 85 S.Ct.1246, 1251 (1965) (holding that the Fourth Amendment's exclusionary rule applies in civil forfeiture

[2] Stanford also argues that the district court improperly struck Mike's Import & Exports, U.S.A., as a claimant. After oral argument and careful consideration, we reject that argument without need for further discussion.

cases). The district court denied Stanford's motion to suppress the evidence from the airport encounter after concluding that she was not "seized" within the meaning of the Fourth Amendment.

Review of a district court's denial of a motion to suppress evidence is a mixed question of law and fact. United States v. Holloway, 290 F.3d 1331, 1334 (11th Cir.2002). We review the district court's findings of fact under the clearly erroneous standard and its application of the law de novo. Id. In reviewing the district court's ruling, this Court must construe the facts in the light most favorable to the party prevailing below, which, in this case, is the government. Id.

Not every encounter between law enforcement officers and individuals constitutes a seizure within the meaning of the Fourth Amendment. United States v. Alvarez-Sanchez,774 F.2d 1036,1040 (11th Cir. 1985). The crucial inquiry in deciding whether a given encounter implicates the Fourth Amendment is determining whether, considering all the circumstances, a reasonable person would have believed that she was not free to leave if she refused to answer an officer's questions. Id.

In this case, we have no trouble concluding that no seizure occurred during the initial encounter between Stanford and the DEA agents in the concourse. There is no evidence that Agents Miles and Johnson used any force or coercion. They were not in uniform, they did not touch Stanford or block her path, and they did not display any weapons. They simply approached Stanford, identified themselves as DEA agents, and asked her a few questions. They did request to see her ticket and driver's license, but returned the items almost immediately. Moreover, she was expressly advised that she was not required to cooperate. Because nothing in this initial encounter would lead a reasonable person to believe that she was not free to leave,

the district court correctly found that no seizure occurred. See United States v. Mendenhall, 446 U.S.544, 555, 100 S.Ct.1870,1878 (1980).

We next consider the agents' request that Stanford accompany them to their office. "An officer's asking an individual to accompany him or her to an office is an intrusive request that raises a presumption that the individual would not feel free to leave absent exceptionally clear evidence of consent." United States v. Espinosa-Guerra, 805 F.2d 1502, 1507 (11th Cit.1986) (internal quotation omitted). Under such circumstances, courts should "scrutinize the evidence with care to ensure that the totality of the circumstances shows an utter absence of coercion and hence truly voluntary consent." Id.

The district court relied on several factors in finding "clear evidence" of Stanford's voluntary consent to accompany the agents to the office. It found that Agent Miles asked Stanford to go to the office rather than telling her to do so, that there was no show of force, and that the door to the interview room remained open at all times. The court further found that Stanford never asked to leave or physically attempted to do so. None of these findings are clearly erroneous.

In addition to these explicit factual findings, the district court implicitly found that Stanford actively consented to go to the office. In its opinion, the district court acknowledged that"[s]ilently following an officer almost never constitutes sufficient evidence of consent." Order at 8 (quoting Espinosa-Guerra ,805 F.2d at 1508). However, the district court found "clear evidence" that Stanford voluntarily consented to accompany the DEA agents to the office. From this finding, we can infer that the district court credited Agent Miles' testimony that Stanford said "sure" when asked if she would accompany him to the office. Like the district court's explicit factual findings, this

implied finding is not clearly erroneous[3].

The foregoing facts, when construed in the light most favorable to the government, support the district court's finding that Stanford voluntarily consented to go to the DEA office for further questioning. See Mendenhall, 446 U.S. at 557-58, 100 S.Ct. at 1879. We cannot conclude that the district court's finding of consent is clearly erroneous. Stanford was not seized within the meaning of the Fourth Amendment, and the district court's opinion is

AFFIRMED.

[3] In advancing Stanford's claim, petitioner's counsel has not sufficiently argued, or has entirely waived, any claim that other facts, such as the duration of Stanford's detention, undermined the validity of her consent or caused that consent to expire.

(2) Supreme Court, U.S.
FILED

05-248 JUL 6 - 2005

No. OFFICE OF THE CLERK

In the

Supreme Court of the United States

$242,484.00, Petitioner

v.

United States of America,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX

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UNITED STATES
DISTRICT COURT
SOUTHERN
DISTRICT OF
FLORIDA

CASE No.99-1259-CIV-MIDDLEBROOKS

UNITED STATES OF AMERICA

Plaintiff,

v.

TWO HUNDRED FORTY-TWO
THOUSAND FOUR HUNDRED
EIGHTY-FOUR DOLLARS, in
United States Currency
($242,484.00),

Defendant,

DEBORAH STANFORD,
Individually and as President,
Director and Stockholder of
MIKE'S IMPORT & EXPORT,
U.S.A., INC., a Florida corporation,

Claimants.

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MEMORANDUM OPINION

THIS CASE came before the Court upon consent of the parties to forego a trial by jury and submit to a bench trial. Trial was held in Miami, Florida, on September 25-27,2001. The case involves civil forfeiture proceedings brought in May of 1999 by the United States pursuant to 21 U.S.C.&881.

I.Facts

The facts of this case are as follows. On December 10,1998, the claimant, Deborah Stanford, flew from Miami, Florida to New York, New York on a Tower Air regularly scheduled flight. The claimant purchased the $93.00 round-trip ticket with cash on December 8,2001, from Palmetto Travel Service. Originally, Ms. Stanford was scheduled to return to Miami on December 12,2001, although for reasons unclear she was a no-show for the original return flight, calling the airline after-the-fact and changing the return date to December 13. Ms. Stanford altered the return date one more time, and finally settled on a Tower Air flight bound for Miami on the morning of December 14,2001.

On the morning of the flight, which left from New York's John F. Kennedy Airport, Ms. Stanford was required, as at all airports in this country, to pass through a security checkpoint before entering the gate area. Upon passing Ms. Stanford's carry-on luggage through the x-ray machine, airport personnel noticed that the bag-a-school-type-backpack-contained two large packages. Ms. Stanford initially refused the airport personnel's requests to verify the contents of the bag, although she then told the worker that the packages contained currency. Ms. Stanford became belligerent upon being questioned as to the bag's contents. One of the airport workers seized the bag, further angering Ms. Stanford. Soon thereafter, the worker's supervisor to arrive on the scene. The supervisor informed the worker that he or she[1] had no authority to effect such a seizure, whereupon the bag was returned to Ms. Stanford. Ms. Stanford then boarded the flight for Miami.

The airport worker then called DEA Agent Brad Cheeks, a member of the JFK Airport Interdiction Unit, and related to him these events. Agent Cheeks proceeded to place a call to DEA Special Agent Kenneth Miles, in Miami International Airport, relaying the information he had received

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[1] **The identity of this airport worker is unknown, to the Court and apparently to the parties as well.**

from the airport worker. Agent Cheeks's description of the woman, whom he himself had never seen, was of a tall Black female carrying two packages containing a large amount of currency in a carry-on bag. Agent Miles, accompanied by Agent John Eric Johnson and three or four other members of the Miami airport DEA unit,[2] proceeded to the gate where Tower Air

flight 41 was scheduled to arrive at approximately 12:30 pm.

Upon that flight's deboarding, Agents Miles and Johnson noticed a woman who matched the description they had received from Agent Cheeks in New York. The two agents approached the woman, Ms. Stanford, showed her their DEA credentials, and asked her if she would speak with them.[3] When Ms. Stanford said yes, Agent Miles asked her for her plane ticket and driver's license, which she provided. The name on the ticket matched the name on the Florida driver's license that Ms. Stanford produced. The license also

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[2] Although these agents accompanied Agents Miles and Johnson to the gate, they scattered themselves around in an attempt to cover more of the gate area. There is no indication that Ms. Stanford ever saw these other men; even if she did, they were dressed in plain clothes and therefore were effectively indistinguishable from other civilians at the gate at that time.

[3] Although both Agent Miles and Agent Johnson confronted Ms. Stanford at the gate area, testimony revealed that only Agent Miles asked her any questions.

bore Ms. Stanford's photograph. After returning the ticket and license, Agent Miles then asked Ms. Stanford the reason for her trip to New York, to which Ms. Stanford replied that she had been there for a civil trial that had arisen out of a traffic accident approximately ten years prior. Agent Miles asked Ms. Stanford whether she was carrying any contraband or large sums of currency, to which Ms. Stanford replied that she was carrying money; asked how much and she said "about two." When asked "about two" what, Ms. Stanford told Agent Miles that she had "about two hundred thousand" on her at the time. Agent Miles asked about the location of the money, and Ms. Stanford pointed to her backpack. Agent Miles asked if he could see the contents of the pack, to which Ms. Stanford consented. The inspection of the backpack revealed that it contained two large packages, one wrapped in black plastic and one wrapped in Christmas wrapping paper. Agent Miles asked consent to poke holes in the packages' wrapping, which Ms. Stanford gave.[4] Each package contained large bundles of currency sealed in a cellophane-type material.

At that point, Agent Miles asked Ms. Stanford to accompany Agent Johnson and him back to the airport's DEA office. Ms.

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[4] **Ms. Stanford denied that Agent Miles poked holes in the wrapping, although she acknowledges giving the agent consent to look into the backpack itself.**

Stanford consented. At all times Ms. Stanford remained calm and responsive to the agent's questioning. The three walked back to the DEA office, with Agent Miles carrying the bag containing the currency. Agent Johnson walked in front of Ms. Stanford, while Agent Miles walked slightly behind. Neither agent touched Ms, Stanford during this time, nor did they display any weapon.

When they arrived at the DEA airport office, the agents led Ms. Stanford into one of the rooms. In one corner of the room, Agent Scott Lamb was seated at a computer terminal. Agent Miles proceeded to question Ms. Stanford about her trip to New York and the source of the currency while Agent Johnson took notes. At this time, Ms. Stanford still had not identified the amount of the currency more than her original statement that it was "about two hundred thousand." Ms. Stanford told the agents that she had been in New York for a civil trial arising out of a traffic accident in which she had been involved, although denied that the money had anything to do with that case. She also said that she was associated with the Florida corporation of Mike's Import and Export USA, Inc.("Mike's"). She stated that while in New York, her brother [5] called her

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[5] **At trial, Ms. Stanford testified that it was her brother Wilbert, who at that time in 1998 was associated with Mike's Import and Export USA, Inc. who had called her in New York.**

and asked her to pick up the money from "some people" for Mike's. She was unable further to identify the individuals from whom she received the money, and when pressed on this issue, responded that her brother had told her that these people would get in touch with her, apparently obviating the need for her to know their names. Agent Lamb, who had been seated at the computer terminal running checks on the information given by Ms. Stanford, then handed Agent Miles a printout from the DEA's Narcotics and Dangerous Drug Information System ("NADDIS") system.[6] Claimant's Exh.

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[6] NADDIS is a clearinghouse for criminal investigations, compiling information from agencies such as the DEA, FBI, and state and local law enforcement agencies. The reliability of this NADDIS report was hotly contested at trial. Although a court is allowed to rely on inadmissible hearsay in determining the issue of probable cause in a civil forfeiture proceeding, see United States v. One parcel of Real Estate at 1012 Germantown Road, 963 F.2d 1496,1501 (11th Cir.1992), the reliability of the information must also factor into this analysis. Here, the government offered in support of its probable cause case this document, which the DEA computer terminal printed out as a result of an unknown query, inputted by an agent who did not take the stand or offer personal testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the personal

1.The printout showed a "hit" for Mike's Import and Export NV. It listed the aliases of this company as including "Mike's Electronics Import and Export" and "Mike's Import Export", with a business address in Opa Locka, Florida. The report stated: "Possible utilized for money laundering." Ms. Stanford was not asked about this report's contents.

Further pressed on the amount of currency she was carrying, Ms. Stanford then answered that the black-wrapped package contained $79,900.00, and the Christmas-wrapped package contained $162,750.00. An official count of the money, done later at the bank pursuant to DEA policy, revealed that the exact amount was $242,484.00, $

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testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the personal testimony of any sort. Further, the report lists "Mike's Import and Export NV", which is similar to but not the same as "Mike's Import and Export USA, Inc." It appears that the former is a foreign corporation, whereas the latter is the Florida corporation controlled by Ms. Stanford. Additionally, trial testimony of Agents Miles and Johnson revealed that the information from DEA reports, which is among that filtered into the NADDIS system, is at times "raw intelligence" information, not always thoroughly corroborated.

166.00 less than Ms. Stanford's answer's total. The money was packaged according to denomination, although the bundles contained different amounts and were of varying thicknesses. They did not bear the banding of any bank or other financial institution.

Meanwhile, aK-9 narcotics dog, Rambo, had been brought to the office by Officer Pedro Perez of the North Miami Beach Police Department. Four or five other bags were placed in next to Ms. Stanford's, and Rambo was allowed to pass in front of them. Rambo "alerted" to the presence of a narcotics smell on Ms.Stanford's backpack containing the currency.[7] Ms. Stanford then returned to the office with Agents Miles, Johnson, and Lamb. Agent Miles again questioned Ms. Stanford about the money, which she again said was related to Mike's. [8] At that point, a "heated exchange" occurred between Ms. Stanford and Mr. James Williams, the DEA supervisor, who had just entered the room. Ms. Stanford for the first time notified the

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[7] Mr. Perez testified that Rambo is trained to detect the odors of cocaine, heroin, marijuana, and methamphetamines. Rambo is a "passive alert" dog, which means that upon detecting one of these four scents, Rambo sits in front of the object. An "active alert" dog would scratch or bark upon alerting to one of the scents.

[8] At trial, Agent Miles stated that at this point, Ms. Stanford had changed her story concerning the source of the money. Agent Miles testified that originally Ms. Stanford said that she was in New York for the court case, and then later in the interview switched to claiming that she was in New York specifically to pick up the money in question.

DEA officials of her desire to phone an attorney, and she was directed to a bank of public pay phones located outside of the office. Ms. Stanford proceeded to call an attorney, the DEA kept the money, and Ms. Stanford left the airport.

Subsequent to the seizure, the DEA performed an investigation into the surrounding circumstances, including a check into Ms. Stanford's New York visit and the business history of Mike's Import and Export USA, Inc. No proceedings were ever brought against Ms. Stanford, nor was she ever arrested for any event arising from the above described happenings. At trial, the government produced records of Mike's money wire transfers occurring in December of 1998, including several transfers between New York and Miami. It is upon the above-related facts that the Court bases its decision.

II. Fourth Amendment Issues

The Claimant here pressed both in pretrial moving papers and during the trial itself that the airport encounter was in fact a seizure that was effected in violation of her rights as protected by the Fourth Amendment. A violation of this Amendment triggers the exclusionary rule, disallowing the use in the government's case-in-chief of evidence so gathered. See

One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, 380 U.S.692,702 (1965); United States v. Premises and Real Property with Buildings, Appurtenance and Improvements at 500 Delaware Street, Tonawanda New York, 113 F.3d 310,312 n.3(2d Cir.1997) ("The Forth Amendment's exclusionary rule applies to forfeiture cases."); United States v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars ($639.558) in United States Currency, 955 F.2d 712,715 & n.5 (D.C.Cir.1992); Vance v. United States, 676 E. 2d 183, 187-88(5th Cir.1982). The question, then, turns on whether under these facts a seizure was effected so as to the Fourth Amendment's protections.

A person is "seized" within the meaning of that term as used in the Fourth Amendment if, considering the totality of the circumstances, a reasonable person would have concluded that he or she was not free to leave. This formulation of the test was first set forth by Justice Stewart in his plurality opinion in United States v. Mendenhall, 446 U.S.544.554 (1980), and subsequently adopted as the appropriate test by the Eleventh Circuit. See United States v. Berry, 670 F.2d 583, 595 (5th Cir.1982) (Unit B) (en banc).[5] There are several

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[5] **In Stein v. Reynolds Secs.,Inc.667 F.2d 33 (11th Cir.1982), the Eleventh Circuit adopted as precedent decisions of the former Unit B of the Fifth Circuit that were issued after September 30,1981.**

factors courts look to in determining whether a seizure occurred specifically in the context of an airport stop such as that in the case at bar. These factors include the officer wearing a uniform, see United States v. Armstrong, 722 F.2d 681, 684 (11th Cir. 1984); the display of a weapon, see Mendenhall, 446 U.S. at 555-56; the officer physically touching the person in question, see id.; see also Armstrong, 722 F.2d at 684; the officer retaining a person's plane ticket or identification, such as a driver's license, see Berry, 670 F.2d at 597; United States v. Elsoffer, 671 F.2d 1294, 1297 (11th Cir.1982); an officer blocking the person's path or impending his or her progress, see id.; see also United States v. Puglisi, 723 F.2d 779, 783 (11th Cir. 1984); and an officer's statement that the person is the focus of an investigation or is suspected of smuggling drugs, see Puglisi, 723 F.2d at 783; United States v. Robinson, 625 F.2d 1211, 1216-17 (5th Cir. 1980). Furthermore, and highly relevant to the facts here, "[a]n officer's asking an individual to accompany him or her to an office is an intrusive request that raises a presumption that the individual would not feel free to leave absent 'exceptionally clear evidence of consent.'" United States v.Espinosa-Guerra, 805 F.2d 1502,1507 (11th Cir.1986), quoting United States v. Alvarez-Sanchez, 774 F.2d 1036, 1041 (11th Cir.1985). Upon a thorough review of these factors as applied to the encounter between the DEA agents and Ms.

Stanford, the Court concludes that no seizure occurred within the meaning of the Fourth Amendment.

First, when Agents Miles and Johnson first approached Ms. Stanford, in the public gate area, the two men were in plain clothes, with no outward indicia of their official positions. Second, these two men were not carrying any weapons that were visible to Ms. Stanford or any other person in the general vicinity. Third, neither agent had any physical contact with Ms. Stanford, and there was only a brief display of authority when the agents withdrew their DEA credentials. See Florida v. Royer, 460 U.S.491, 497 (1983)(plurality op.) (stating that "the fact that the officer identifies himself as a police officer" does not "cover the encounter into a seizure…"). This situation is similar to that in Armstrong, where the court found under similar circumstances that "[t]his type of contact does not rise to the level of a seizure and thus is outside the realm of fourth amendment protection." 722 F.2d at 684. Additionally, although Agent Miles asked for Ms. Stanford's ticket and identification, which she freely produced, Agent Miles returned these items to Ms. Stanford almost immediately. Agent Miles never told Ms. Stanford that she was the target of an

investigation.[10] This type of routine, nonthreatening conduct, whereby an officer is allowed simply to check a person's basic information, does not rise to the level of a seizure. See Puglisi, 723 F.2d 784 (finding no seizure where officer asked individual twice for plane ticket and once for driver's license and "return[ed] them promptly each time").

However, after this brief, public encounter, the agents then asked Ms. Stanford to accompany them to the DEA's airport office for further questioning. Although Ms. Stanford consented, this type of "intrusive request" triggers a presumption that a reasonable individual would not feel free to leave. This warrants a more searching inquiry by the court and requires a heightened showing of the individual's voluntary consent. See Espinosa-Guerra, 805 F.2d at 1507. Particularly troubling here is the fact that there is no evidence that Ms. Stanford was ever told that she was free to leave. Agent

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[10] Agents Miles and Johnson testified that the conversation had begun by Agent Miles explaining what the DEA's purpose is in performing drug interdiction at the airport, and how private citizens can help in that regard. Ms. Stanford testified that Agent Miles never said anything of this nature. Regardless of whether this was said or not, there is no indication that Agent Miles ever said anything about Ms. Stanford herself being the target of a drug investigation.

Miles testified that had Ms. Stanford attempted to leave, he would have let her go. However, no one ever told Ms. Stanford this. Cf. Armstrong, 722 F.2d at 684 (finding no seizure where officer notified individual that he was free to leave). However, Ms. Stanford consented to going with the agents and never showed any outward signs of her desire to leave.[11] Although the record is replete with her statements about how she felt that she was not free to leave, this is not the appropriate inquiry. It is not the individual's subjective state of mind that is the focus of the inquiry; it is an objective consideration of how a reasonable person would feel. This allows law enforcement officials to fulfill their professional duties with objective guidelines in mind, and prevents them from being forced to try to view the situation from one particular individual's point of view. This is how law enforcement officials know when their actions require that an individual be read his or her Miranda rights, for example, or when, as here, a

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[11] **Ms. Stanford testified that the agents "behaved the way police officers behave when they stop someone and they want someone to come with them." If the Court were to accept this-officers behaving as officers-as all that is required for a police encounter to qualify as a Fourth Amendment seizure, it would seemingly vitiate the well-established principle that "not all police-citizen encounters are within the protective scope of the fourth amendment." Espinosa-Guerra 805 F.2d at 1506.**

Fourth Amendment seizure has taken place such that the officials need to have reasonable suspicion to proceed.

On these facts, Ms. Stanford was not seized when she accompanied the DEA agents to the airport office. Although "[s]ilently following an officer almost never constitutes sufficient evidence of consent, "Espinosa-Guerra, 805 F.2d at 1508, Ms.Stanford testified that Agent Miles "asked [her] to accompany him to that room," and that the agents "asked [her] to come with them and sit there…[and that she] did what they asked." The door to the office in which the interview was conducted was open at all times. A in the encounter at the airport gate, there was no show of force by the DEA officials. Ms. Stanford never asked to leave, nor did she physically attempt to do so.
Therefore, the facts offer "clear evidence" that Ms. Stanford voluntarily consented to accompanying the agents to the DEA office, and she was not seized within the meaning of the Fourth Amendment.

Even if the Court were to find Ms. Stanford's consent to go to the office for further questions not to have been given voluntarily, by the time the officers asked her this, they had developed a reasonable suspicion sufficient to overcome the Fourth Amendment proscriptions on such seizures.

"Once a stop has been held a seizure, it can be constitutional only if based upon reasonable suspicion. The Supreme Court has defined reasonable suspicion as "specific and articulable facts which, taken together with rational inferences from those facts, warrant [an] intrusion.'"Berry, 670 F.2d at 598, quoting Terry v.Ohio, 392 U.S.1,21(1968). It was not a mere hunch that caused the agents to request that Ms. Stanford accompany them to the DEA office. Agent Miles knew that Ms. Stanford was arriving in Miami from New York City, two source cities for narcotics and related activity. See United States v. Cooper, 873 F.2d 269, 274 (11th Cir.1989) ("Miami, Florida, is a significant drug distribution city for the entire United States."); Espinosa-Guerra, 805 F.2d at 1508.

He also knew that Ms. Stanford had on her person a large sum of U.S.currency, wrapped in black plastic and Christmas paper. See United States v. Rojas, 671 F.2d 159, 164-65 (5th Cir. Unit B 1982) (concluding reasonable suspicion supported seizure in large part because individual was carrying large amount of cash). Moreover, Agent Miles, as well as Agent Johnson, are experienced DEA agents who have received extensive training in airport drug interdiction operations. These two men were aware of the possible significance of the situation unfolding before them. See Puglisi, 723 F.2d at 789 (relying in part on the experience of the DEA agent in concluding that reasonable

suspicion existed under the totality of the circumstances). Therefore, the agents had a reasonable, articulable
suspicion sufficient to justify the possible seizure of Ms. Stanford .

In sum, Ms. Stanford was not "seized" within the meaning of the Fourth Amendment when the agents approached and asked her questions concerning the currency at the gate. Ms. Stanford then voluntarily consented to accompanying the agents to the DEA office for further questions.
Finally, even If the voluntariness of Ms.Stanford's consent were in doubt, the agents had by that time developed reasonable, articulable suspicion of possibly criminal activity. Therefore, under these facts, the salutary strictures of the Fourth Amendment were not violated, and the evidence is freely admissible in the government's probable cause case.

III.Procedure in Civil Forfeiture Actions

Forfeiture proceedings have had a long and colorful history. See Austin v.United States, 509 U.S.602,611-614(1993)(describing the law of forfeiture in England at time of passage of the Eighth Amendment). Since their beginning, the forfeiture laws have undergone extensive development.
In our current legal system, forfeiture proceedings can be in personam, which is to say, predicated upon the wrongdoing of a

person who is then forced to forfeit his or her property as punishment; or purely civil in rem proceedings, wherein it is property itself, wholly apart from its owner, that is claimed to have been involved in the offense.[12]

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[12] In United States v. Bajakajian, 524 U.S.321 (1998), The Supreme Court had occasion to visit the issue of the distinction between these two types of proceedings:

The Forfeiture in this case does not bear any of the hallmarks of traditional civil in rem forfeitures. The Government has not proceed against the currency itself, but has instead sought and obtained a criminal conviction of respondent distinct from potentially punitive in peronam civil penalties....." United States v. Ursery,518 U.s. 267,278 (1996).In an in rem forfeiture proceeding , "[I]t is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it were conscious instead of inanimate and insentient." Various Items of Personal Property v. United States, 282 U.S.577,581 (1931); see also Austin, 509 U.S. at 624 (Scalia, J., concurring in part and concurring in the judgment)("The theory of in rem forfeiture is said to be that the lawful property has committed an offense."). An in personam forfeiture action is markedly different in that such an action is in herently intertwined with the punishment of the person; it is most often part and parcel of the punishment imposed for a criminal conviction. See Bajakajian, 524 U.S.at 332("[I]n personam, criminal forfeitures....have historically been treated as punitive, being part of the punishment imposed...."). Such would be the case, for example, in a conviction of a large-scale drug trafficker, whose house was then forfeited due to its use in connection with the drug trade. Forfeiture of the house is part of the

personally. The forfeiture serves no remedial purpose, is designed to punish the offender, and cannot be imposed upon innocent owners. Section 982(a)(1) thus descends not from historic *in rem* forfeitures of guilty property, but from a different historical tradition: that of *in personam*, criminal forfeitures. Such forfeitures have historically been treated as punitive, being part of the punishment imposed for felonies and treason in the Middle Ages and at common law.
Id.at 31-32.Similarly, in his opinion for the Court in *Ursery*, Chief Justice Rehnquist explained that

Since at least *Various Items*, we have distinguished civil penalties such as fines from civil forfeiture that are in rem. While a 'civil action to recover …penaltie[s[, is punitive in character,' and *much like a criminal prosecution* in that '[i]t is the wrongdoer in person who is proceeded against….and punished,' in an *in rem*

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punishment of the trafficker. As is apparent, these proceedings depend upon the guilt of the owner, not just of the property itself, and therefore are properly entitled to more of the constitutional protections accorded criminal proceedings. See infra note 14 (mentioning recent Supreme Court cases addressing the intersection of civil forfeiture proceedings and constitutional safeguards). In contrast,in rem proceedings are separate and apart from the criminal behavior and possible culpability of anyone (or anything) save the property itself. See Usery, 518 U.S. at 289("Congress

forfeiture proceeding, 'it is the property which is proceeded against, and by resort to a legal fiction, held guilty and condemned.' 518U.S.at 283, *quoting Various Items*, 282 U.S.at 580-81 (emphasis added). The proceedings here are far from "like a criminal prosecution"; no allegations are leveled against Ms. Stanford, nor is there any indication whatsoever that she herself was involved in any narcotics-related wrongdoing. This is a pure civil *in rem* forfeiture proceeding. specifically structured these [7881] forfeitures to be impersonal by targeting the property itself.").

But *see id.*at 295 (Kennedy,J.,concurring) ("Distinguishing between *in rem* and *in personam* punishments does not depend upon,or revive, the fiction.....that the property were punished as if it were a sentient being capable of moral choice. It is the owner who feels the pain and receives the stigma of the forfeiture, and the property.")(citations omitted). Certain issues arise in a criminal *in personam* forfeiture proceedings that are not implicated by a purely civil *in rem* action. Simply put, allegations concerning the guilt of a person are substantively, and hence procedurally, different than actions brought solely against property. As Justice Kennedy explained in his concurrence in *Ursery*,

> True, the forfeiture statutes require proof of a violation of a drug trafficking or other offense, but the purpose of this

predicate showing is just to establish that the property was used in a crime. In contrast to criminal forfeiture, civil *in rem* forfeiture actions do not require a showing that the owner who stands to lose his property interest has committed a criminal offense.

Id.at 296(citations omitted). In sum, "civil *in rem* forfeiture is not punishment of the wrongdoer for his criminal offense."Id.at 293.

In the case at bar, no proceedings were against Ms. Stanford, nor was she ever arrested in connection with these funds. The gravamen of the government's allegations here concerns the currency's alleged guilt of being connected to an illicit narcotics transaction. Aside from her posture as a possessory claimant to the money, Ms. Stanford could be said to be irrelevant. This is not an attempt to punish Ms. Stanford herself for any type of criminal offense. Indeed, this is a quintessential civil *in rem* forfeiture action.

Section 881 of Title 21 of the United States Code sets forth in relevant part the following:

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

....

(6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

Id.& 881(a)(6). The heart of the issue here, however, and in a slew of other forfeiture cases brought under this section, is the standard by which the government may legitimately seize the property in question. The statute provides for lawful seizure of the property when "the Attorney General has probable cause to believe that the property is subject to civil forfeiture under this subchapter." Id.& 881(b)(4).[13] Congress contemplated that the civil forfeiture laws be "the ideal weapon for breaking the backs of sophisticated narcotics operations," for

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[13] The burden-shifting scheme of section 881 is set forth in 19 U.S.C.& 1615. See United States v. Ursery, 518 U.S.267,289(1996).

they would attack such operations at their base of economic power. See S.Rep.No.225,98th Cong., 2d Sess.191 (1983), reprinted in 1984 U.S.C.C.A.N.3182,3374. Following the laws' enactment, however, there has been great debate over the proper burden which the government must meet in order legitimately to seize an individual's property, be it a house, automobile, or cash.[14]Recently,

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[14] Claimant also raised an issue concerning the direction in which Supreme Court jurisprudence in the area of civil forfeiture is heading, based upon an assessment of *United States v.Bajakakian*,524 U.S.321 (1998); *Austin* v. United States, 509 U.S.602(1993); and United States v. *James Daniel Good Real Property*, 510 U.S,43(1993). These three cases imported some constitutional protections into civil forfeiture proceedings. The Supreme Court took the first step in this process when, in *James Daniel Good Real Property*, it held that "[u]nless exigent circumstances are present, the Due Process Clause requires the Government to afford notice and a meaningful opportunity to be heard before seizing real property subject to civil forfeiture."510 U.S.at 62. More recently, Bajakajian held that forfeiture are "fines" if they constitute punishment for an offense, and that such fine must not be grossly disproportional to the offense. See 524 U.S.at 343-44. This decision thus clarified the role of the English Amendment's Excessive Fines Clause, which was first incorporated into civil forfeiture proceedings by Austin. See 509 U.S.at 622. All three cases dealt with forfeiture proceedings growing out of the underlying wrongdoing of the owner: in Bajakajian, it was the owner's failure to report exported currency; in Austin, it was the sale of cocaine; and in James Daniel Good Real Property, it was a conviction for the promotion of a harmful drug-marijuana. For this reason alone, these cases are distinguishable from

Congress responded to this concern by amending the civil forfeiture statute so that the government is required" toe stablish, by a preponderance of the evidence, that the property is subject to forfeiture." Civil Asset Forfeiture Reform Act of 2000, H.R.1658 Cong.& 2(c). In introducing this legislation, various and diverse voices were heard in its support. Senator Orrin Hatch concluded that "[w]hile civil forfeiture is a valuable law enforcement tool, it has become increasingly clear that some reform of civil forfeiture law is necessary given the numerous

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the situation at bar, which is a pure civil in rem proceeding. There are no-nor have there ever been any- allegations of criminal behavior leveled against Ms. Stanford in connection with this occurrence. Claimant, however, asserted that this line of cases, taken to its logical conclusion, signifies that all civil forfeiture proceedings are entitled to all the protections of criminal proceedings. Specifically, this would mean, in claimant's view, that the government would bear the burden of proving beyond a reasonable doubt the forfeitability of seized property. Congress has edged somewhat closer toward this standard in the most recent civil forfeiture law amendments. However, this Court finds that to read as much into the above-mentioned Supreme Court cases would be to extend their respective logic past the breaking point. It would effectively put an end to law enforcement officials' legitimate use of the civil in rem forfeiture laws and allow many illicit narcotics enterprises to retain the proceeds of their lawlessness. The Court finds that neither the Constitution nor this line of cases require of the government such a high burden of proof in this purely in rem civil forfeiture proceeding.

controversial seizures of property in the last decade" and that "[f]ederal civil forfeiture procedures…. Provide inadequate protections for private property …." 146 Cong.Rec.S1753-02,1759(2000).[15]This Act was passed in early 2000.[16]

Under the earlier forfeiture laws applicable to this case, the claimant must first establish standing, whereupon the burden shifts to the government to show probable cause for forfeiture of asset. If the government meets this standard, the burden shifts back to the claimant to prove by a preponderance of the evidence that the property is derived from a legitimate source

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[15] See also id.at 1759-60(statement of Sen.Leahy)("This is a significant improvement over the current system and should go a long way toward stemming the abuses that have so offended Americans across the country and the political spectrum. It is not often that we see the U.S.Chamber of Commerce, ACLU, NRA, National Association of Criminal Defense Lawyers, American Bankers Association, Institute of Justice, Americans for Tax Reform, and the American Bar Association joining together on the same side of a legislative effort.")

[16] The increased burden placed on the government does not apply to the case at bar, which was commenced in May of 1999, as the Act applies only "to any forfeiture proceeding commenced on or after the date that is 120 days after the date of the enactment…." Civil Asset Reform Act of 2000,H.R.1658, 106th Cong.§ 21; see also United States v. Carrell, 252 F.3d 1193, 1202 n.10(11th Cir. 2001); United States v. Ahmad, 213 F.3d 805, 808 n.1 (4th Cir.2000)(briefly discussing Reform Act's parameters).

or that the claimant is an "innocent owner." See, e.g., United States v. $121.000.00 in United States Currency, 999 F.2d 1503, 1505 (11th Cir.1993).

A.Standing

First, a claimant must establish standing as an owner of the property at issue. See United States v. One Parcel of Real Property at 1012 Germantown Rd., Palm Beach County, Fla.,963 F.2d 1496, 1500 (11th Cir.1992). The claimant must "claim an ownership or possessory interest in the property seized." United States v. Five Hundred Thousand Dollars, 730 F.2d 1437,1439 (11th Cir. 1984). The burden of proof of establishing standing in such forfeiture proceedings is on the claimant. See id. The interest that a claimant need assert in order to have standing "need not be an ownership interest; including a possessory interest. See United States v. $191.,910.00 in U.S.Currency, 16 F.3d 1051,1057 (9th Cir.1994). The issue of standing to assert a claim in a forfeiture action is a question of law. See United States v. Real Property at 5000 Palmetto Dr., 928 F.2d 373,375 (11th Cir.1991).

There is some question of standing here that causes the Court briefly to dwell on the issue. When first asked about the money in question, Ms. Stanford disclaimed all but a possessory interest in it, saying that she

had received it from "some people," whom she was unable to identify or to state a reason why "some people" would give her such a large amount of cash. Later on in the interview with Agent Miles, while still in the office at the Miami airport, Ms. Stanford revised this answer by stating that she had in fact received a call from her brother, who told her to "pick up some money" for Mike's Import and Export USA, Inc.(Mike's"). Therefore, the actual claimant would be the corporate entity acting on its own behalf through its agents. However, no verified claim was ever filed on behalf of Mike's. Although the amended verified complaint filed by Ms. Stanford on August 11,1999, is captioned "AMENDED AND VERIFIED SUPPLEMENTAL CALIM OF DEBORAH STANFORD, Individually and as Shareholder, Officer and Director of Mike's Import & Export USA, Inc. a Florida corporation," the corporation itself never asserted a claim. Just as a corporation can sue in its capacity as a corporate entity, so too can a corporation assert a claim in a forfeiture proceeding. Therefore, as an initial matter, the Court finds Mike's did not establish standing in its corporate capacity in the present case.[17] However,Ms. Stanford, as a

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[17] **Although standing was an issue earlier in this case, it was not pressed by the government a trial. However, standing is a matter of a federal court's subject matter jurisdiction and is therefore properly considered by this Court sua sponte. See Bischoff v.**

possessor, has standing in her individual capacity to pursue the claim, and the Court's analysis proceeds accordingly.

B.Probable Cause

If the claimant demonstrates that he or she has standing to assert a claim to the seized property, the burden shifts to the government to show probable cause for the seizure and forfeiture. See One Parcel of Real Estate, 963 F.2d at 1500. In order to meet its burden on probable cause, the government must show that "it has a reasonable ground for belief of guilt, supported by less than prima facie proof but more than reasonable suspicion." Id.at 1501 (quoatations omitted).[18] The Eleventh Circuit has clarified this requirement by explaining that at this stage of a section 881 (a)(6) forfeiture proceeding, the government must show "probable cause that there is a substantial connection between the [seized] property and illegal drug transactions....." United States v.900 Rio Vista Blvd.,803 F.2d 625, 629 n.3(11th Cir.1986). It is the trial

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Osceola County, Florida, 222 F.3d 874,877-78(11th Cir.2000).

[18] The probable cause threshold in a drug forfeiture case is the same as the probable cause threshold which is applicable everywhere else." United States v. $506.231 in United States Currency, 125 F.3d 442, 451 (7th Cir.1997); see also United States v.One Parcel of Real Estate, 852 F. Supp.1013, 1032 (S.D.Fla.1994).

court's responsibility to determine whether the government has met its burden on this issue. See id.[19] in evaluating the totality of the circumstances included in the government's probable cause case, a trial court is not to affect some form of "clinical detachment," but rather should take " a common sense view to the ralities of normal life." United States v. Carrell, 252 F.3d 1193, 1201 (11th Cir.2001), quoting United States v.Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d 895, 903, 904 (11th Cir.1985).

The critical issue facing this Court, however, is what real-world requirements this legal definition imports and places on the government. On the one hand, viewing factual evidence in the sterile and removed setting of a federal courtroom risks rendering nugatory any sort of commonsense understanding of how much of this country's illicit drug trafficking operates. Such a determination would ignore reality. On the other hand, to allow the government to meet its burden by importing into a given set of suspicious and perhaps even criminal circumstances a fairly tenuous theory

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[19] The government's probable cause evidence "may include facts learned after the actual seizure of the money." United States v.$41,305.0 in Currency and Traveler's Checks, 802 F.2d 1339, 1343 (11th Cir.1986), citing United States v. Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d 895, 902 n.12(11th Cir.1985).

connecting the facts to an illegal narcotics transaction risks transforming this particular federal statute into a general panacea for the country's crime problem as a whole. Such a result may expand law enforcement's power well beyond the scope of Congress's intentions. See United States v. $31,990 in United States Currency, 982 F.2d 851, 856 (2d Cir.1993) ("Since 'there is little to discourage federal agents from seizing property illegally and then seeking evidence of probable cause, 'courts must guard against the abuse of forfeiture in the government's zeal to apprehend and prosecute drug dealers."), citing George C.Pratt & William B. Peterson, Civil Forfeiture in the Second Circuit, 65 St. John's L. Rev.653, 668-69(1991). The Eleventh Circuit vocalized this strugglein United States v. $38,000 in United States Currency, 816 F.2d 1538 (11th Cir.1987), when it stated

> We are not unsympathetic to the government's strong desire to eradicate drug trafficking: we recognize that illegal drugs pose a tremendous threat to the integrity of our system of government. We must not forget, however, that at the core of this system lies the Constitution, with its guarantees of individuals' rights. We cannot permit these rights to become fatalities of the government's war on drugs.

Id. at 1543-49."Accordingly, courts must cautiously balance the government's

strong desire to eradicate illicit drug trafficking against constitutional guarantees of individual rights." United States v. One Parcel of Real Estate at 1012 Germantown Road, 963 F.2d 1496,1500 (11th Cir.1992).[20]

Based upon a review of the law in this area from the Eleventh Circuit and the other Courts of Appeals, there is no consensus as to what exactly constitutes such probable cause. The factually intensive nature of the inquiry has given rise to a plethora of opinions reaching differing results based on similar circumstances. For this reason, a brief review of some of the relevant caselaw is warranted here.

In United States v. Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960) in United States Currency, 661 F.2d 319 (5th Cir.Unit B 1981), the Fifth Circuit reversed the district court's grant of summary judgment in favor of the claimant, which the district court had granted due to its conclusion that the government had not met its burden concerning probable cause to forfeit. In that case, the

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[20] **See also,e.g.,United States v.$31,990 in United States Currency, 982 F.2d 851, 856 (2d Cir. 1993) ("While we recognize the formidable task faced by the government in its war on drugs, we decline to condone the abuse of civil forfeiture as a means to winning that war.").**

police found two Colombian aliens[21] in an apartment in which the men proclaimed to have no interest. See id.at 323-24. A cursory search of the apartment uncovered "narcotics paraphernalia, guns," and the money in question. Id. at 324. The court held that " under these circumstances," a large amount of currency was enough for a court legitimately to "infer a connection with illegal narcotics trafficking." Id. Similarly, in United States v.$41,305.00 in Currency and Traveler's Checks, 802 F.2d 1339 (11th Cir.1986), the court found probable cause to forfeit monies found in the claimant's home where the facts included that the claimant's husband "had a reputation among law enforcement authorities as a dealer in narcotics" and had recently delivered a kilo of cocaine; and that claimant's husband was subsequently prosecuted and received a life for narcotics-related crimes. Id.at 1343-1344 & 1344 n.8.
These cases presented sufficient evidence to conclude that there was probable cause to believe that the seized property was connected to illegal narcotics.

More recently, the Eleventh Circuit has examined and found probable cause sufficient to subject currency to forfeiture in the

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[21] The court specifically noted that Colombia was "a country where large amounts of the narcotics that enter the United States originate....." Id.ay 323-24.

context of an airport interdiction. See United States v. $121,000.00 in United States Currency, 999 F.2d 1503 (11th Cir.1993). There, an individual was approached by DEA officials at the airport gate of the individual's Atlanta-to-New York flight. Airline officials had alerted the DEA agents to the fact the day before this individual had purchased a round trip ticket, in cash,[22] with an itinerary calling for him to fly to New York in the morning and return to Atlanta that same evening. See id.at 1505. Additionally, the ticket was issued under a false first name. The individual was "quite nervous" when questioned by the DEA officials, was carrying nearly a quarter of a million dollars in cash, and, "critically [he] had a history of narcotics arrests and convictions." Id.at 1507 (emphasis in original). On these facts, the Eleventh Circuit found that the government had probable cause to seize the currency under 21 U.S.C.& 881.

The common thread running through all of these cases, and distinguishing them from the one at bar, appears to be the existence of at least some direct evidence connecting

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[22] **The court noted that, "[a]s the Supreme Court has explained,'[m]ost business travelers....purchase airline tickets by credit card or check so as to have a record for tax or business purposes.'" 999 F.2d at 1507, quoting United States v. Sokolow, 490 U.S.1,8-9(1989).**

the seized currency to narcotics activity.[23] Should such a factor be dispositive of the issue, especially in light of the directive that trial courts should not view the evidence through the lens of "clinical detachment" but rather through informed, real-world experience and knowledge?

The answer is suggested in United States v.Four Million, Two Hundred Fifty-

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[23] The sometimes arbitrary nature of this inquiry into the currency-narcotics nexus is well illustrated by the Ninth Circuit's recent analysis in United States v.$22,474.00 in U.S.Currency, 246 F.3d 1212(9th Cir.2001). In that case, the court was faced with the facts remarkably similar to those presented by an earlier Ninth Circuit case, United States v. $49,576.00 in U.S.Currency, 116 F.3d 425 (9th Cir.1997), where the government had failed to establish probable cause. In distinguishing this earlier case, the $22,474.00 court stated

> In that[earlier]case, a drug detention dog alerted to currency, the claimant fit a drug courier profile, he gave evasive and dishonest answers to questions by law enforcement officers, and he had once been detained, nut not charged, in connection with a drug-related crime. We held that although the circumstances established probable cause to believe that the claimant was involved in some illegal activity, there was no evidence connecting that activity with narcotics. The present case is different. Here,[claimant]admitted he had been convicted of trafficking in cocaine. This was sufficient, when added to the sophisticated dog sniff and all of the other factors, tip the scales in favor of establishing probable cause.

Id.at 1217 (citations omitted; emphasis in original). The difference seems slight at best.

Five Thousand, 762 F.2d 895 (11th Cir.1985), where the appellate court affirmed the district court's finding of probable cause to forfeit even where there was no direct connection between the currency and one or more narcotics transactions. The evidence included " a huge amount of money" routed through a Colombian citizen's Miami bank account, id. at 903; that the oftentimes unidentified couriers who delivered the money to the bank "did not request, and on at least several occasions refused to accept, receipts for the cash, "id.; that the cash consisted of small and medium denomination bills; and that the cash was delivered in a variety of containers, including cardboard boxes and duffel bags. See id. Although the record contained no direct evidence of any connection with narcotics transactions, the Eleventh Circuit concluded that under the totality of the circumstances, probable cause did exist to " to believe that a 'substantial connection' existed between the forfeited money and narcotics transactions." Id. The court "emphasize[d] that, here, it is the totality of the circumstances, and not merely the nationality of the couriers or the amount of money involved," that established probable cause. Id.at 903n.18. Therefore, the substantial connection" required by section 881 may be found despite a lack of direct evidence to that effect.

Two recent cases from other circuits seem to have imposed a more rigid approach to the analysis of whether a "substantial connection" has been made. For example, in United States v. $506.231 in United States Currency, 125 F.3d 442 97th Cir.1997), a search of a Chicago pizzeria executed pursuant to a search warrant uncovered more than half a million dollars in cash and three unregistered handguns. See id. at 444. The money, consisting mostly of small bills and wrapped in plastic bags, had been secreted in a forty -four gallon barrel and stashed inside some sort of elevator or dumbwaiter shaft. See id. After the seizure, a narcotics-detection dog alerted to the presence of narcotics on one of the many bundles of seized currency. See id. at 453. Based on this evidence, combined with the fact that no allegations were made "that narcotics were used inside or at the pizzeria, that any narcotics transactions occurred inside or at the pizzeria, or that there was ever any money (much less the money in issue here) exchanged for narcotics inside or at the pizzeria," id. at 452-53, the Seventh Circuit held that the government had failed to meet its probable cause burden. Because of this ruling, the court never reached the point of explaining how a small Chicago pizzeria "operat[ing] only as a pizza parlor" had that much cash in small bills hidden in its dumbwaiter shaft. Id.at 454.

Even more recently, in United States v. Ten Thousand Seven Hundred Dollars and No Cents ($10,700.00)in United States Currency, 258 F.3d 215 (3d Cir. 2001), the third Circuit also weighed in against the government's seizure of money in a civil forfeiture action. In that case, three men in a rented vehicle were stopped for traveling ten miles per hour over the posted speed limit along Interstate 295 through Delaware. The men were nervous and gave varying answers when asked about the group's travel plans. See id.at 219. A consensual search of the vehicle's trunk revealed $21,000 in cash inside a plastic bag in a backpack and $8,000 inside a duffel bag. Additionally, $2,950 was found on one of the men's person. A drug-detection dog's positive alert on the currency and the results of an ION Scan Analysis both indicated the presence of narcotics on the money. See id.at 220. However, the appellate court found that on these facts, the government did not have probable cause to seize the currency. See id. at 234. In reaching this conclusion, the court questioned the evidentiary significance of the discrepancies concerning to where and for what the men were traveling; the men's nervousness upon being questioned; the information the police had received regarding the high drug-trafficking neighborhood of Wilmington, Delaware, in which the men lived; one of the men's 1995 conviction for conspiracy to traffic in

cocaine; and the dog alert and the results of the ION Scan Analysis. See id. at 226-34. The court summed up by stating that "[w]hile some of the factors upon which the government relies arguably are suspicious and suggestive of involvement in some illicit activity, and might even support a 'hunch' that the money somehow was connected to the drug trade, they do not rise to the level of establishing probable cause to institute forfeiture proceedings under &881(a)(6)."

The reasoning reflected by these cases, seemingly eschews any sort of "common sense view of the realities of normal life." Carrell, 252 F.3d at 1201. Direct evidence of a connection to narcotics seems from these cases to have become a sine qua non of a legitimate section 881 forfeiture action. Finding that the government failed to establish probable cause to institute the forfeiture action. Finding that the government failed to establish probable cause to institute the forfeiture proceedings in these latter cases meant that the Seventh and Third Circuits avoided requiring the claimants there to explain these admittedly suspicious circumstances. How and why does a Chicago pizzeria have nearly half a million dollars in small bills on hand? Why do three men traveling through Delaware in a rented vehicle have more than twenty thousand dollars in cash when they are unable to proffer the same reason as to

where they are going and for what purpose? Perhaps this is normatively how things should operate-the individuals in question should not have to explain their respective situations without a more direct evidentiary case being put on by the government. The Court would not quarrel with this proposition-if that is what "probable cause" meant. These cases, however, seem to heighten the "probable cause" threshold. The overall issue pinions on who should bear the burden of explaining the circumstances and more precisely, when this burden shifts from the government to establish probable cause to the claimant to explain it away.

Based on the facts in the case at bar, and keeping in mind the lens through which they are to be viewed, This Court finds that the government here has met its initial probable cause burden. Although this is admittedly a close question, the totality of the circumstances, and not one factor standing alone, sufficiently evidences the required connection to illegal narcotics.

First, the quantity of cash Ms. Stanford was carrying and its physical condition is indicative of illicit activity. Although the Court well recognizes that this factor has never in and of itself been held to be sufficient to establish probable cause, see $121,100.0, 999 F.2d at 1506("No court, to our knowledge, has held that the quantity of seized currency alone passes this totality

of the circumstances test."), it is relevant and constitutes one factor in the overall consideration. See id. at 1507 ("Although insufficient by itself to demonstrate a connection to illegal drugs, the quantity of cash seized in this case is highly probative of a connection to some illegal activity."); see also United States v. Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars($364,960.00) in United States Currency, 661 F.2d 319, 324 (5th Cir.Unit B 1981). Ms. Stanford was carrying almost a quarter of a million dollars, in cash, wrapped in plastic and Christmas wrapping, on a public flight. Although it is far from criminal in the United States to carry a large amount of currency, it is as indicative of narcotics activity as it is of anything else, as one would be hard-pressed to encounter a dealer in narcotics who accepted a personal check or credit card payment. However, "[t]hat the evidence presented would support an alternative hypothesis does not prevent it being probative on the issue of probable cause." Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324. additionally, the packaging of the currency is highly suspicious, as it shows that the money had not been counted and bundled at a bank, as one would expect when dealing with such a large amount of currency. The Christmas wrapping suggests an intention to conceal the currency consistent with the

behavior of a courier of drug proceeds. The amount and condition of the money, then, is one factor weighing in favor of a finding or probable cause.[24] Second, the route and circumstances surrounding Ms. Stanford's travel is in line with typical drug transactions. Although allegedly on a business trip, Ms. Stanford purchased th ticket in cash, one factor in the totality of the circumstances. See $121,000.00 in United States Currency, 999 F.2d at 1507. As Agent Johnson testified, in his experience as a DEA official, drug organizations often utilize the Miami-to-New York flight corridor to disseminate drugs from South Florida, where many drugs initially enter

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[24] The narcotics-detention dog's alert to the currency is also worth noting, although perhaps worth little else. The evidentiary value of an "alert" to currency by one of these canines has seriously been questioned of late. See, e.g.,$506,231 in United States Currency, 125 F.3d at 453 & n.8; United States v. U.S.Currency, $30,060.00, 39 F.3d 1039, 1041-43(9th Cir.1994); United States v. $53,082.0 in United States Currency, 985 F.2d 245, 250 n.596th Cir.1993); United States v.$639,558.00 in United States Currency, 955 F.2d 712, 714 n.2(D.C.Cir.1992). All else being equal, however, the money upon which a narcotics dog "alerts" is more likely to have come into contact with narcotics at some time in the fairly recent past than money upon which a drug dog does not alert. Therefore, although weak, this factor is relevant here. See contamination of currency plainly lessens the impact of dog sniff evidence, a trained dog's alert still retains some probative value.").

the country. See United States v. Cooper, 873 F.2d 269, 274 (11th Cir. 1989)("Miami, Florida, is a significant drug distribution city for the entire United States."); United States v. Forero-Rincon, 626 F.2d 218, 220(2d Cir.1980)("[T]he DEA has designated Miami as a 'source city' that is, a city from which narcotics are frequently carried into the New York City area for distribution....."). The reverse path, New York to Miami, is used to bring the proceeds from these drugs back to South Florida. The present facts fit with this scenario. Of course, not all people traveling between these cities are suspects from whom the government may legitimately seize even extremely large amounts of cash. However, when viewed as part of the totality of the circumstances, and considering the real-world happenings as testified to by those who know-including DEA Agent Miles and Johnson-this is one more factor weighing in favor of a finding of probable cause. Third, Ms. Stanford's lack of knowledge concerning the circumstances surronding her trip to New York and the receipt of this money, including her inability to identify from whom she received it, is suspicious.[25]

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[25] **The NADDIS report, revealing that at some time there had been a report concerning the possible involvement of Ms. Stanford's business in a money laundering operation, also has some slight relevance. The report's value in the probable cause case is negligible, however, due to the issues of credibility that it brings to the table. See supra note 6.**

One would reasonably expect that someone receiving such money would know the names of such people. Furthermore, Ms. Stanford was unable to produce to the DEA any sort of documentation regarding the receipt of this money. This is in line with the DEA's assertion-and a commonsense understanding-that drug and drug-money couriers are usually kept in the dark as to the sources' identities so as to minimize the possibility of a detained or arrested courier providing such information to law enforcement authorities, Additionally, when questioned by the DEA, Ms. Stanford was unable or unwilling to tell them where she stayed in New York. Such suspicious and evasive answers, although far from dispositive of the issue, add to the government's probable cause case. See, e.g.,United States v. One Lot of U.S.Currency ($36,634), 103 F.3d 1048, 1055 (1st Cir.1997); United States v.$37,780,920 F.2d 159, 163(2d Cir.1990).

It is also of some significance that Ms. Stanford twice was a "no show" for her scheduled departure from New York to Miami. In the end, she boarded a flight bound for Miami two days later than her original itinerary. Drug Enforcement officials are cognizant of the fact that "drug deals are often delayed, causing participants to have to stay in a location longer than anticipated....." United States v. Espinosa-Guerra, 805 F.2d 1502, 1508 (11th Cir.1986). The Court finds no reason that this would

not hold equally true as concerns transactions related to the actual drug deal, such as an exchange of money. This is but one more factor in the probable cause determination.

Thus, in sum, the totality of the circumstances here support the conclusion that the government carried its burden of establishing probable cause to believe that the money in question was subject to forfeiture under 21 U.S.C. & 881.[26] Evidence sufficient to shift the burden to claimants in a forfeiture proceeding need not provide conclusive proof,...but rather a reasonable ground for belief. That the evidence

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[26] The Court finds that the procedural structure of this civil forfeiture action informs the analysis of the government's probable cause case as well. If the burden the claimant bears in order to get the money back from the government were more than the "preponderance of the evidence" standard, perhaps courts would appropriately subject the government's evidence to closer scrutiny. This is, however, not the situation under the law applicable here. See Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324 ("We note also that our holding does not result automatically in forfeiture; it merely shifts the burden to claimants to rebut the government's theory."); see also State of Georgia, Dep't of Med. Assistance v.Shalala, 8 f.3d 1565, 1572 (11th Cir.1994) ("Under common statutory interpretation principles, this Court must look at the 'particular statutory language at issue, as well as the language and design of the statute as a whole.'"), quoting Sullivan v. Everhart, 494 U.S.83, 89(1990).

presented would support an alternative hypothesis does not prevent it being probative on the issue of probable cause." Three Hundred Sixty Four Thousand Nine Hundred Sixty Dollars ($364,960.00) in United States Currency, 661 F.2d at 324. As a logical deduction from the proposition that evidence is to be seen in the coloring light of common sense, "probable cause may be based wholly on circumstantial evidence." $41,305.00 in Currency and Traveler's Checks, 802 F.2d at 1343. Such is the case at bar. Therefore, the burden shifted to Ms. Stanford, the claimant, to prove that the money derived from a legitimate source or that she qualified as an "innocent owner".

C. Claimant's Burden

Once the government meets its initial probable cause burden, "the ultimate burden falls upon the claimant to prove by a preponderance of the evidence a defense to the forfeiture…." United Stated v. Two Parcels of Real Property Located in Russell County, Alabama, 92 F.3d 1123, 1126 (11th Cir. 1996). "This burden is met either by rebutting the government's evidence" that the property is not and was not purchased with proceeds of a narcotics transaction "or a showing that the claimant is an 'innocent owner" who did not know of the property's connection with drugs sales." United States v. One Single Family Residence, 933 F.2d 976, 979 (11th Cir.1991). "Innocent owners are those who have no knowledge of the

illegal activities and who have not consented to the illegal activities." Id.at 981. If the claimant fails to satisfy one of these two requirements, the asset is forfeit.

First, Ms. Stanford was unable to prove by a preponderance of the evidence that the money at issue was not in fact the proceeds of an illegal narcotics transaction. Ms. Stanford claimed that the money derived from Mike's Import and Export USA, Inc.("Mike's"), of which she at all times has been a principal.[27] She testified that Mike's at times would receive money from Surinamese individuals in the New York area, which would be used to buy goods and ship them to recipients in Surinam. It would seem relatively simple for Ms. Stanford to have come forth with proper documentation of this, such as receipts for the money received. At trial, Ms. Stanford failed to explain exactly how Mike's made money on a transaction such as the one described. Especially because Ms. Stanford bore the burden of proving the currency's legitimacy,

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[27] Trial testimony was confusing as to who controlled this business entity and when. It appears that although Ms. Stanford is currently the sole shareholder and President of Mike's, her brother Wilbert, also played some role in the business's operations during December of 1999, when this seizure occurred.

this would seem to be fairly important.[28] Additionally, the Court finds it telling that there is absolutely no evidence or allegations of any of these individuals coming forward in the time between the seizure and the trial in an attempt to obtain their money from Mike's.

Furthermore, when questioned at trial, Ms. Stanford claimed that she had stayed in Brooklyn with "some friends," whom she claimed to be "friends of long-standing," although she could not identify these "friends."[29] At trial, she testified that she

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[28] The business of laundering money is itself fairly lucrative. Back in 1994, one writer described how, "[I]n the eight years since money laundering has become a federal crime and the U.S. government has begun to concentrate resources on its enforcement, the cost of laundering money has risen from 6 percent to a maximum of 26 percent for full-service laundering: pickup, transfer to multiple banks, merging with funds from legal sources and finally inverstment." David A. Andelman, The Drug Money Maze, 73 Foreign Affairs 108 (July/Aug.1994). The process cash is deposited in an account, then the steps to commingle the dirty money with legitimate financial transactions- seems to correspond with the occurrences here. Ms. Stanford was found with a large amount of cash which came from an unexplained source and had an uncertain destination. These circumstances factor into the analysis of Ms. Stanford's assertions. Ms. Stanford had the burden of proving the money's legitimacy by a preponderance of the evidence; this congruence seems to add to her inability to do so.

[29] It appears that Ms. Stanford gave conflicting testimony at trial concerning whether she at one time

picked up the money from two men whom she could not identify at a café in Brooklyn that she could not describe. The Court finds this lack of knowledge probative on the issue of the legitimacy of the money. As mentioned above, the burden was on Ms. Stanford to come up with such evidence of the money's legitimacy. Such a lack of knowledge concerning the basic facts and circumstances surrounding the receipt of almost a quarter of a million dollars in cash does little in the way of helping Ms. Stanford meet her burden here.

At trial, the government offered evidence of various wire transfers between banks in New York and Mike's. See Gov't Exhs.25,26. This was not a business unfamiliar with wire transfers. However, none of the wire transfers approached the

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knew the names of these two men or not. She at first stated that "I was told their names, who was, I was told their names and in order to identify them I had to have their names."

However, on cross-examination, Ms. Stanford stated the following:

> **A.....And these were individuals that knew the persons that were there and they picked up the money and I received it from them.**
>
> **Q. And who are they? What is the name of these people?**

A. These were two individuals that made payment to me. If someone is making payment to you, you accept the payment, knowing what you are supposed to receive you accept the payment and I won't go into the background of asking them who are you and, you know, what is your qualifications and all of that.

amount of cash carried by Ms. Stanford. Moreover, while the records show some cash deposits, all were of small amount. Mike's business records do not provide any explanation for this transaction. Therefore, based on the testimony and evidence presented by Ms. Stanford, the claimant, the Court finds that she did not carry her burden of establishing the money's legitimacy by a preponderance of the evidence.

A claimant may also avoid forfeiture by proving that he or she was an "innocent owner". On the facts here, the Court finds that ms. Stanford was unable to do this. First, Ms. Stanford did not claim to be an "owner." As has already been discussed, Ms. Stanford claims to have been unaware of the circumstances surrounding the receipt of this money other than that her brother called her and told her to pick it up. However, this does not entitle her or her company to receiving the benefit of the "innocent owner" defense to forfeiture. See United States v. Milbrand, 58 F.3d 841, 844 (2d Cir. 1995)("Where an owner has engaged in willful blindness as to activities occurring on her property, her ignorance will not entitle her to avoid forfeiture."), quoting United States v. One Parcel of Real Property, Located at 755 Forest Road, 985 F.2d 70,72 (2d Cir, 19930. Furthermore, it is not the government's burden to prove that the claimant had such knowledge, but rather "it is the claimant's responsibility to

prove the absence of actual knowledge." Four Million, Two Hundred Fifty-Five Thousand, 762 F.2d at 907 (emphasis in original). Ms. Stanford did not offer any evidence on this defense at trial. The Court finds that Ms. Stanford failed to carry her burden on the "innocent owner" defense, and the property is therefore subject to forfeiture.

IV. Conclusion

The Court finds that based upon the totality of the circumstances as viewed with an eye toward a commonsense interpretation of these circumstances, the government established probable cause for forfeiture of the money in question. There was no violation of the Fourth Amendment, and therefore all of the government's evidence was properly considered. Ms. Stanford was then unable to meet her burden and avoid such forfeiture. Final Judgment in favor of the Government will be entered by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this 5 day of October 2001.

DONALD M.MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

c.c.Lornette A. Reynolds,AUSA
Douglas L. Williams, Esq.